



40 NW 3rd St PH 1, Miami, FL 33128 | Office: 305-395-5775 | Fax: 305-395-5785 | christopherdecoste.com

November 6, 2023

Judge J. Paul Oetken
Thurgood Marshall United States Courthouse
40 Foley Sq
New York, NY 10007

Re: *United States v. Costanzo* / 22-CR-281-JPO

Dear Judge Oetken:

I have never appeared before Your Honor but been a member of the Florida Bar since 2005. I am also a longtime member of the Criminal Justice Act panel for the Southern District of Florida. Prior to being a defense attorney, I was a state prosecutor in Miami-Dade, Florida. In my 18 years of being an attorney I have never had any disciplinary matters. I take very seriously the requirements upon me as an attorney, which is why I am so bothered by the government's motion. (Letter Motion, ECF No. 161).

The government's motion is largely incorrect. For the few correct facts, they leave many more out to create a false narrative. The email exchanges properly frame the issues and are attached. (Ex. A and B). Further, they are conflating issues between: (1) a subpoena to a company that would require a representative to testify for the government; and (2) a subpoena to an individual that baselessly invades their privacy because they chose to testify for the defense instead of for the government under limited immunity. These subpoenas were also a quarter of a decade apart. The government is doing all this because they dropped the ball and failed to properly and timely serve Mr. Pagan. The scenario they want this Court to accept and validate with an order is that I somehow tricked three Ivy League educated prosecutors, which is a tough sell.

In March 2021—near the height of the pandemic—I accepted a subpoena for JEM Solutions, Inc. (JEM). The government's motion states it was only partially answered and that is incorrect. All items were sent electronically, and the original signed business records certification was mailed to them via United States Postal Service (USPS). Two and a half years later they discovered they did not have it and requested one be sent. There were no subpoenas sent nor accepted after March 2021. A new business records certification was executed because I did not retain a copy of the first one. A newly executed one was mailed to the government via USPS on October 4, 2023, again somehow not received, and later emailed.

On September 25, 2023, I spoke with the government about Mr. Pagan being listed by the defense as a trial witness. Weeks prior, I spoke with the government and they offered limited immunity for his testimony, which was declined. During the September 25th call the government sternly and foolishly accused me of not fully complying with the 2021 JEM subpoena. Interestingly, they do not explain in their motion what transpired and only that they reprimanded me. Perhaps to cast me in a bad light before the Court to get a favorable ruling. I will gladly explain what transpired. Mr. Pagan worked on *United States v. Grobman*. In this call, the government rattled their saber as usual, saying there was no evidence Mr. Pagan worked on the case. I responded there absolutely was evidence and it will come out in trial. I was sharply accused of not complying with the 2021 JEM subpoena. Once the prosecutor was done and caught his breath, I reminded him that there are two kinds of evidence—physical and testimonial. And that it was the latter Mr. Pagan would provide to a jury concerning his work on the case. I went on to explain how offensive it was to hurl such an accusation. It was because of this call, where the government was attacking like a wounded animal because they cannot control Mr. Pagan testifying for the defense nor sit with him before trial, that I chose to cease all communications with the government. There were no phone calls between September 25th and this past Friday; the government's motion is again misleading by generically stating there were "multiple communications afterwards." Nor were there any emails concerning Mr. Pagan. I truly regret calling the government Friday because once again they are hurling baseless accusations and now also trying to create a false narrative by picking and choosing facts and twisting words. It is really frustrating.

The JEM business records certification is a separate issue discussed briefly in a separate email chain with subject line "JEM Custodian of Record Form." (Ex. B). These emails are the only communications, meaning this is where I allegedly bamboozled three seasoned prosecutors. There is no basis to connect these few emails to the trial subpoena for Mr. Pagan. In fact, in these exchanges they follow up multiple times, which is what they should have done concerning Mr. Pagan's trial subpoena. They are desperately trying to conflate issues to support the wild theory that all three of them were hoodwinked, to defend against their lack of diligence.

On September 27, 2023, they emailed the trial subpoena for Mr. Pagan in the other email chain with subject line "Pagan." If they somehow thought I was blanketly accepting subpoenas because I accepted one 30 months prior during a global pandemic for a different entity, there was no need for them to say "[p]lease confirm that you will accept service on his behalf." No subpoenas have ever been accepted on behalf of Mr. Pagan. I am under no obligation, that I know of, to object or respond to their email. Especially not on a case where they previously threw professionalism out the window and consistently threaten to indict Mr. Pagan to force him to cooperate, or as I would say, commit perjury for the government. In my experience, anytime I have not immediately responded to such emails from prosecutors in other districts, because of things like personal leave or trial, I have received a follow up from the prosecutor or case agent that they were proceeding with service. Here, once Mr. Pagan was legally obligated to perform, we would commit the considerable time and resources needed and do as required. Until that time, we would not, as is our right.

I questioned whether the subpoena was merely a scare tactic to try to keep Mr. Pagan from testifying for the defense. I also questioned whether the government would follow through because some of the items requested are either redundant, inaccessible, or irrelevant. Whereas the government sees this as gamesmanship, I see it as protecting Mr. Pagan's limited time, limited resources, and constitutional rights against overzealous prosecutors.

I was surprised when the government emailed Friday night that they expected production. Interestingly, their motion mentions twice what time I called but does not highlight the time they emailed—7:30 p.m. Perhaps another attempt to cast me in a bad light before the Court to get a favorable ruling. Instead, they describe it as “earlier that day.” Almost everything they say in that paragraph is incorrect or misleading. I read their after-hours email around 9:00 p.m. and asked myself how could they not know he was not served? I believed they had abandoned their scare tactic once trial started. I also knew they had most of the items listed. I reflected and realized this could disrupt the flow of Your Honor's trial and maybe they were honestly mistaken. So, I called the government a short time later to discuss, which I regret. I should have known better from the last call. They resumed hurling accusations, and this time contorted my words to fit their false and foolish narrative that they were finagled.

Importantly, most of the items they request are already in their possession and probably in evidence. Thus, they are not prejudiced, but instead aggravated they cannot setup Mr. Pagan for the cross examination they hoped, to make it seem like he is unable or unwilling to produce items. In the end, it is they who are playing games and trying to create evidence by using a subpoena as interrogatories. This is increasingly concerning when they have long threatened to indict Mr. Pagan.

Mr. Pagan and I would have committed the necessary time and resources upon proper and timely service. First, I would have studied the requests greater. Next, I would have moved Pro Hac Vice and engaged local counsel. Then I would have drafted objections because certain requests are vague, and some items are inaccessible. For example, in line 1 they ask for “[...] personal assets for the years 2018 and 2019.” Are they asking for personal assets acquired in those years, or personal assets held in those years? Further, in that same line they ask for “[r]ecords sufficient to show all sources of income [...].” Well, Mr. Pagan cannot access his 2018 Wells Fargo bank statements because the government caused the account to be shutdown. He was locked out and cannot access recent statements, let alone ones more than five years old. I trust, however, that the government already has these bank statements and all others. Moreover, in line 6 they ask for “foundational documents” for JEM. These items were produced years ago in response to the JEM subpoena. Last, in line 3 they ask for supporting documentation for claimed expenses on tax returns that were originally filed more than three and a half years ago, which is beyond the IRS's suggested retention period for tax returns and supporting documentation. Here, why did the government wait so long?

Thereafter we would produce as the Court required. If the government waited too long to serve Mr. Pagan, I would add insufficient time to reply to my list of objections. We are now beyond insufficient time and instead at no time. Mr. Pagan and I can only acquire so much over a weekend when he is already in New York. Mr. Pagan has nothing to hide and is willing to provide what we have and can acquire on short notice. He and I, however, expect those trying to punish people for not following one set of rules, to follow the other set that applies to the possible punishment process.

While writing this response the government provided an update to the Court. I offered to accept on condition they acknowledge their mishandling, which limits production. I consider my offer rejected by their motion to the Court to enter an order sans acknowledgement. Therefore, acceptance was not rescinded, and I know of no authority that prohibits acceptance with conditions, but I could be wrong. I continue to work diligently organizing items and await instruction from the Court on how to proceed. Unfortunately, it has become impossible to confer with the government safely or constructively.

The government was not duped. They fumbled and are trying to shift blame. They are doing this because they want to erect a framework upon which to cross examine my client. All they had to do is adhere to norms and rules but failed. I ask that the Court not enter an order that fixes their mishandling but instead holds them responsible for it.

Respectfully submitted,

/s/ Christopher M. DeCoste

Christopher M. DeCoste

Law Office of Christopher DeCoste, P.A.

40 NW 3rd St PH 1, Miami, FL 33128

Phone: 305-395-5775

Email: cmd@christopherdecoste.com

Ex. A

From: Christopher DeCoste cmd@christopherdecoste.com
Subject: Re: Re: [EXTERNAL] Pagan
Date: November 4, 2023 at 6:50 PM
To: Andrews, Mathew (USANYS) Mathew.Andrews@usdoj.gov
Cc: Deininger, Emily (USANYS) Emily.Deininger@usdoj.gov, Hubbard, John William (NY) (FBI) jwhubbard@fbi.gov, Swett, Sebastian (USANYS) Sebastian.Swett@usdoj.gov, Jeffrey, Delise Natasha (NY) (FBI) DNJEFFREY@fbi.gov, Davis, Lonnie W. (OIG) Lonnie.W.Davis@usdoj.gov

This is wildly incorrect. I'll file the entire email chain in response. You should be ashamed of yourself.

Regards,

Christopher M. DeCoste
Law Office of Christopher DeCoste, P.A.

40 NW 3rd St PH 1, Miami, FL 33128
305-395-5775

christopherdecoste.com

Sent from my iPhone

On Nov 4, 2023, at 6:41 PM, Andrews, Mathew (USANYS) <Mathew.Andrews@usdoj.gov> wrote:

Chris, please see the attached. We've filed it with the Court, defense counsel, and on ECF.

From: Christopher DeCoste <cmd@christopherdecoste.com>
Sent: Saturday, November 4, 2023 3:52 PM
To: Deininger, Emily (USANYS) <EDeininger@usa.doj.gov>
Cc: Andrews, Mathew (USANYS) <MAndrews@usa.doj.gov>; Hubbard, John William (NY) (FBI) <jwhubbard@fbi.gov>; Swett, Sebastian (USANYS) <SSwett@usa.doj.gov>; Jeffrey, Delise Natasha (NY) (FBI) <DNJEFFREY@fbi.gov>; Davis, Lonnie W. (OIG) <Lonnie.W.Davis@usdoj.gov>
Subject: Re: [EXTERNAL] Re: Pagan

We accept with the understanding any legal responsibility to provide items started this afternoon. We will do our best to provide everything within the short timeframe, over a weekend, and with him in a different state. Had he been timely served, legally requiring him to sacrifice time and handle, things would likely have been different. Arguing anything to the contrary, like "noncompliance" or playing games, would be inappropriate.

Regards,

Christopher M. DeCoste
Law Office of Christopher DeCoste, P.A.

40 NW 3rd St PH 1, Miami, FL 33128
305-395-5775

000 000 0770

christopherdecoste.com

Sent from my iPhone

On Nov 4, 2023, at 2:34 PM, Christopher DeCoste
<cmd@christopherdecoste.com> wrote:

Incorrect. I was asked in September and answered. Last night I reconsidered amidst the confusion and made contact.

As explained to your colleague last night, my not answering should have been taken as a no. I can share emails with AUSAs from all over the country where not responding was taken as a no and they served. Here, your office wrongly and confusingly assumed my not answering was a yes? That service is a mere formality? You cannot say you were waiting for an answer all that time after yesterday's initial email to me. As of the writing of this email my client is under no legal obligation to produce anything. Yet words like "noncompliance" are being used.

Then I got the email last night, saw there was somehow confusion, and reached out in the spirit of professionalism. The unwillingness to take any responsibility here is wild. Your office dropped the ball and is trying to shift blame onto me and my client.

Regards,

Christopher M. DeCoste
Law Office of Christopher DeCoste, P.A.

40 NW 3rd St PH 1, Miami, FL 33128
305-395-5775

christopherdecoste.com

Sent from my iPhone

On Nov 4, 2023, at 2:18 PM, Deininger, Emily (USANYS)
<Emily.Deininger@usdoj.gov> wrote:

The question was asked over a month ago, on September 27.

From: Christopher DeCoste <cmd@christopherdecoste.com>
Sent: Saturday, November 4, 2023 2:15 PM
To: Deininger, Emily (USANYS) <EDeininge@usa.doj.gov>
Cc: Andrews, Mathew (USANYS) <MAAndrews@usa.doj.gov>; Hubbard, John William (NY) (FBI) <jwhubbard@fbi.gov>; Swett, Sebastian (USANYS) <sswett@usa.doj.gov>; Jeffrey, Delise Natasha (NY) (FBI) <DNJEFFREY@fbi.gov>; Davis, Lonnie W. (OIG) <Lonnie.W.Davis@usdoj.gov>
Subject: Re: [EXTERNAL] Re: Pagan

I agree with that statement and you will have an answer the same day as the question was asked.

As for the September email and my not responding, the norm is to take that as a no. As explained to your colleague last night, things changed dramatically between me and your office when I was foolishly accused of something because of a failure to understand that testimony is also evidence.

If your office is foolish enough to put me on the stand I will happily explain these bully tactics to the jury, and how everything is viewed through dirty windows—even a witness's attorney.

Regards,

Christopher M. DeCoste
Law Office of Christopher DeCoste, P.A.

40 NW 3rd St PH 1, Miami, FL 33128
305-395-5775

christopherdecoste.com

Sent from my iPhone

On Nov 4, 2023, at 1:57 PM, Deininger, Emily (USANYS) <Emily.Deininger@usdoj.gov> wrote:

There is nothing out of the norm in expecting counsel to be able to confirm whether they are accepting service of a subpoena on behalf of a client. But we look forward to receiving the production.

Best,
Emily

From: Christopher DeCoste
<cmd@christopherdecoste.com>
Sent: Saturday, November 4, 2023 1:32 PM
To: Andrews, Mathew (USANYS)
<MAAndrews@usa.doj.gov>
Cc: Deininger, Emily (USANYS)
<EDeininger@usa.doj.gov>; Hubbard, John William
(NY) (FBI) <jwhubbard@fbi.gov>; Swett, Sebastian
(USANYS) <sswett@usa.doj.gov>; Jeffrey, Delise
Natasha (NY) (FBI) <DNJEFFREY@fbi.gov>;
Davis, Lonnie W. (OIG)
<Lonnie.W.Davis@usdoj.gov>
Subject: Re: [EXTERNAL] Re: Pagan

If you want to continue speaking tone back the aggression. Although they might not be privileged I am under no obligation to answer your questions, but I have. You need to be patient while we spend the day sorting things. Know your aggressive and accusatory emails are complicating things.

Unpack the other scenario. We say no, you serve my client today or tomorrow, and when asked why he did not produce the answer will probably be because you waited until the last minute to serve him, is not going to open the door and allow the government in without a legal requirement to do so (kind of a big part of the foundation of this country), and could only do so much because he is already in New York.

Regards,

Christopher M. DeCoste
Law Office of Christopher DeCoste, P.A.

40 NW 3rd St PH 1, Miami, FL 33128
305-395-5775

christopherdecoste.com

Sent from my iPhone

On Nov 4, 2023, at 1:18 PM, Andrews, Mathew (USANYS)
<Mathew.Andrews@usdoj.gov> wrote:

Chris, please confirm that you have spoken with your client, that he is aware of the subpoena, that he accepts service, and that he intends to comply. These statements are not privileged.

From: Christopher DeCoste
<cmd@christopherdecoste.com>
Sent: Saturday, November 4, 2023 1:01 PM
To: Andrews, Mathew (USANYS)
<MAndrews@usa.doj.gov>
Cc: Deininger, Emily (USANYS)
<EDeininger@usa.doj.gov>; Hubbard, John William (NY) (FBI)
<jwhubbard@fbi.gov>; Swett, Sebastian (USANYS)
<SSwett@usa.doj.gov>; Jeffrey, Delise Natasha (NY) (FBI)
<DNJEFFREY@fbi.gov>; Davis, Lonnie W. (OIG)
<Lonnie.W.Davis@usdoj.gov>
Subject: Re: [EXTERNAL] Re: Pagan

The two emails I just read are alarming and incorrect. I called last night in the spirit of professionalism because you all were under the misguided belief he was served. The onus was on you. Nevertheless, you are once again on the warpath and hurling accusations and threats towards me. Are you suggesting I breached attorney-client privilege too?

I cancelled my personal trip to work on this issue so you have everything this weekend, which is before the date you expected it.

I also said I would speak to my client and we would probably accept. Where is the issue? What is the reason for the aggression? I am starting to think there is an ulterior motive. like creating

to an extent that, this morning
reason to cross my client on failure to
comply or the nonexistence of items.

I will take your call to discuss these
issues but will not be questioned,
especially not about privileged matters.

Regards,

Christopher M. DeCoste
Law Office of Christopher
DeCoste, P.A.

40 NW 3rd St PH 1, Miami, FL
33128
305-395-5775

christopherdecoste.com

Sent from my iPhone

On Nov 4, 2023, at 11:10
AM, Andrews, Mathew
(USANYS)
<Mathew.Andrews@usdoj.gov> wrote:

Chris, we're following up
with you. You said
yesterday that you were
going to speak with Pagan
this morning. We're trying
to get ahold of you. Please
confirm that you've spoken
with Pagan, and that you
have accepted service of
the subpoena. We also
need to speak with you,
because you may be called
be called as a witness.

From: Andrews, Mathew

(USANYS)
<MAndrews@usa.doj.gov>
Sent: Saturday, November 4, 2023 5:46 AM
To: Christopher DeCoste
<cmd@christopherdecoste.com>
Cc: Deininger, Emily
(USANYS)
<EDeininge@usa.doj.gov>
; Swett, Sebastian
(USANYS)
<sswett@usa.doj.gov>
Subject: Re: [EXTERNAL]
Re: Pagan

Chris, my colleague filled me in on your conversation. The failure to comply with this subpoena is going to be raised with the court. If your client says that he didn't act in it based on your advice (or failure to provide it to him), you could be called as a witness.

Get [Outlook for iOS](#)

From: Andrews, Mathew
(USANYS)
Sent: Friday, November 3, 2023 7:30:30 PM
To: Christopher DeCoste
<cmd@christopherdecoste.com>
Cc: Deininger, Emily
(USANYS)
<EDeininge@usa.doj.gov>
; Swett, Sebastian
(USANYS)
<sswett@usa.doj.gov>
Subject: RE: [EXTERNAL]
Re: Pagan

Chris, defense counsel stated yesterday that Pagan will be testifying in their defense case. Are you going to come up to New York with him? There will

YORK with him? There will be a lot of thorny 5th Amendment issues on cross-examination, and he's going to need an attorney with him in the courtroom. Obviously, counsel for Costanzo can't do that because there's a conflict of interest. Also, we're going to need both hard copy and electronic versions of the documents requested in the subpoena. Can you confirm we'll get those the moment he enters the courtroom?

From: Swett, Sebastian (USANYS)
<SSwett@usa.doj.gov>
Sent: Wednesday, September 27, 2023 3:09 PM
To: Christopher DeCoste <cmd@christopherdecoste.com>; Andrews, Mathew (USANYS) <MAndrews@usa.doj.gov>
Cc: Deininger, Emily (USANYS) <EDeining@usa.doj.gov>
Subject: RE: [EXTERNAL] Re: Pagan

Chris,

Attached is a trial subpoena to Pagan in the event he testifies. Please confirm that you will accept service on his behalf.

Thanks,
Sheb

From: Christopher DeCoste
<cmd@christopherdecoste.com>

From: Christopher DeCoste cmd@christopherdecoste.com
Subject: Re: Re: [EXTERNAL] Pagan
Date: September 25, 2023 at 3:40 PM
To: Andrews, Mathew (USANYS) Mathew.Andrews@usdoj.gov
Cc: Deininger, Emily (USANYS) Emily.Deininger@usdoj.gov, Swett, Sebastian (USANYS) Sebastian.Swett@usdoj.gov

Yes, try again

Regards,

Christopher M. DeCoste
Law Office of Christopher DeCoste, P.A.

40 NW 3rd St PH 1, Miami, FL 33128
305-395-5775

christopherdecoste.com

Sent from my iPhone

On Sep 25, 2023, at 3:40 PM, Andrews, Mathew (USANYS) <Mathew.Andrews@usdoj.gov> wrote:

Hi Chris, we just tried calling you. Are you available?

From: Christopher DeCoste <cmd@christopherdecoste.com>
Sent: Monday, September 25, 2023 3:15 PM
To: Deininger, Emily (USANYS) <EDeininger@usa.doj.gov>
Cc: Andrews, Mathew (USANYS) <MAndrews@usa.doj.gov>; Swett, Sebastian (USANYS) <SSwett@usa.doj.gov>
Subject: Re: [EXTERNAL] Re: Pagan

Hi. Works for me if still for you.

Regards,

Christopher M. DeCoste
Law Office of Christopher DeCoste, P.A.

40 NW 3rd St PH 1, Miami, FL 33128
305-395-5775

christopherdecoste.com

Sent from my iPhone

On Sep 22, 2023, at 12:30 PM, Deininger, Emily (USANYS)
<Emily.Deininger@usdoj.gov> wrote:

Chris, how about Monday at 3:30?

Thanks,
Emily

From: Christopher DeCoste <cmd@christopherdecoste.com>
Sent: Friday, September 22, 2023 11:57 AM
To: Swett, Sebastian (USANYS) <SSwett@usa.doj.gov>
Cc: Andrews, Mathew (USANYS) <MAndrews@usa.doj.gov>; Deininger, Emily (USANYS) <EDeininger@usa.doj.gov>
Subject: Re: [EXTERNAL] Re: Pagan

Hi,

I do and next week is best.

Regards,

Christopher M. DeCoste
Law Office of Christopher DeCoste, P.A.

40 NW 3rd St PH 1, Miami, FL 33128
305-395-5775

christopherdecoste.com

Sent from my iPhone

On Sep 18, 2023, at 6:42 PM, Swett, Sebastian (USANYS)
<Sebastian.Swett@usdoj.gov> wrote:

Chris,

We just received the defendants' witness list for our upcoming trial against Costanzo and Recio, and Pagan is listed as a defense witness. Do you have a minute to chat about this? I am traveling this week and have limited availability, but feel free to schedule something that works for my colleagues, AUSA Andrews and AUSA Deininger.

Best,
Sheb

From: Swett, Sebastian (USANYS)
Sent: Thursday, August 17, 2023 3:22 PM
To: Christopher DeCoste <cmd@christopherdecoste.com>
Cc: Andrews, Mathew (USANYS) <MAndrews@usa.doj.gov>
Subject: RE: [EXTERNAL] Re: Pagan

Sure. Are you free at all between 12-3?

Best,
Sheb

From: Christopher DeCoste <cmd@christopherdecoste.com>
Sent: Thursday, August 17, 2023 2:42 PM
To: Swett, Sebastian (USANYS) <SSwett@usa.doj.gov>
Cc: Andrews, Mathew (USANYS) <MAndrews@usa.doj.gov>
Subject: [EXTERNAL] Re: Pagan

Hi,

Chaotic week. How about tomorrow?

Regards,

Christopher M. DeCoste
Law Office of Christopher DeCoste, P.A.

40 NW 3rd St PH 1, Miami, FL 33128
305-395-5775

christopherdecoste.com

Sent from my iPhone

On Aug 14, 2023, at 10:32 AM, Swett, Sebastian (USANYS) <Sebastian.Swett@usdoj.gov> wrote:

Hi Chris,

I hope this email finds you well. Would you have time today for a short phone call about Mr. Pagan?

Best,
Sheb

Sheb Swett | Assistant United States Attorney
U.S. Attorney's Office for the Southern District of

U.S. Attorney's Office for the Southern District of
New York
1 Saint Andrew's Plaza
New York, NY 10007
(o) (212) 637-6522
(c) (646) 832-8041

Ex. B

From: Christopher DeCoste cmd@christopherdecoste.com

Subject: Re: Re: [EXTERNAL] JEM Custodian of Record Form

Date: October 20, 2023 at 12:28 PM

To: Andrews, Mathew (USANYS) Mathew.Andrews@usdoj.gov

Cc: Swett, Sebastian (USANYS) Sebastian.Swett@usdoj.gov, Deininger, Emily (USANYS) Emily.Deininger@usdoj.gov

Hi. I haven't sent yet because I haven't returned to my office. Understanding the urgency, attached is a photo my receptionist just took, which should suffice.

Declaration of Custodian of Records

Pursuant to 28 U.S.C. § 1746, I, the undersigned, hereby declare:

My name is EDWIN PAGANT II
(name of declarant)

I am a United States citizen and I am over eighteen years of age. I am the custodian of records of the business named below, or I am otherwise qualified as a result of my position with the business named below to make this declaration.

I am in receipt of a Grand Jury Subpoena, dated March 19, 2021, and signed by Assistant United States Attorney Sheb Swett, requesting specified records of the individual named below. Pursuant to Rules 902(11) and 803(6) of the Federal Rules of Evidence, I hereby certify that the records provided herewith and in response to the Subpoena:

- (1) were made at or near the time of the occurrence of the matters set forth in the records, by, or from information transmitted by, a person with knowledge of those matters;
- (2) were kept in the course of regularly conducted business activity; and
- (3) were made by the regularly conducted business activity as a regular practice.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10-4-23
(date)

[Signature]
(signature of declarant)

EDWIN PAGANT II PRESIDENT
(name and title of declarant)

JEM SOLUTIONS INC
(name of business)

1825 PONCE DE LEON BLVD #199
(business address)

CONAL GABLES, FL 33134

Definitions of terms used above:

As defined in Fed. R. Evid. 803(6), "record" includes a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses. The term "business" as used in Fed. R. Evid. 803(6) and the above declaration includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.



Regards,

Christopher M. DeCoste
Law Office of Christopher DeCoste, P.A.

40 NW 3rd St PH 1, Miami, FL 33128
305-395-5775

christopherdecoste.com

Sent from my iPhone

On Oct 20, 2023, at 6:54 AM, Andrews, Mathew (USANYS) <Mathew.Andrews@usdoj.gov> wrote:

Hi Chris, we have still not received the signed custodian of record form. Please see attached a trial subpoena to the custodian of record from JEM. If we receive the scan of the requested custodian of record form today, the custodian will be excused from appearing. Otherwise the custodian of record will need to be in the courthouse on Monday 10/23 at 9am and everyday thereafter until he/she is called to testify.

From: Andrews, Mathew (USANYS)
Sent: Tuesday, October 17, 2023 1:48 PM
To: Christopher DeCoste <cmd@christopherdecoste.com>
Cc: Swett, Sebastian (USANYS) <SSwett@usa.doj.gov>; Deininger, Emily (USANYS) <EDeining@usa.doj.gov>
Subject: RE: [EXTERNAL] Re: JEM Custodian of Record Form

I don't believe we received the mailed copy, but I could be mistaken. If you could please scan and send as soon as you can later this week, we'd be appreciative.

From: Christopher DeCoste <cmd@christopherdecoste.com>
Sent: Tuesday, October 17, 2023 1:45 PM
To: Andrews, Mathew (USANYS) <MAndrews@usa.doj.gov>
Cc: Swett, Sebastian (USANYS) <SSwett@usa.doj.gov>; Deininger, Emily (USANYS) <EDeining@usa.doj.gov>
Subject: Re: [EXTERNAL] Re: JEM Custodian of Record Form

Mathew, already executed and mailed a couple weeks ago. Will email electronic copy when I return to office later this week.

Regards,

Christopher M. DeCoste
Law Office of Christopher DeCoste, P.A.

40 NW 3rd St PH 1, Miami, FL 33128
305-395-5775

christopherdecoste.com

Sent from my iPhone

On Oct 17, 2023, at 1:41 PM, Andrews, Mathew (USANYS)
<Mathew.Andrews@usdoj.gov> wrote:

Chris, it's been almost a month and we're still missing the signed custodian of record form. Can you please have this signed and returned to us today? Otherwise the custodian is going to need to show up at 9am on 10/23 and stay each day until we call him/her.

From: Andrews, Mathew (USANYS)
Sent: Friday, September 22, 2023 11:59 AM
To: Christopher DeCoste <cmd@christopherdecoste.com>
Cc: Swett, Sebastian (USANYS) <SSwett@usa.doj.gov>; Deininger, Emily (USANYS) <EDeininger@usa.doj.gov>
Subject: RE: [EXTERNAL] Re: JEM Custodian of Record Form

Yes it's attached. Thanks Chris.

From: Christopher DeCoste <cmd@christopherdecoste.com>
Sent: Friday, September 22, 2023 11:56 AM
To: Andrews, Mathew (USANYS) <MAndrews@usa.doj.gov>
Cc: Swett, Sebastian (USANYS) <SSwett@usa.doj.gov>; Deininger, Emily (USANYS) <EDeininger@usa.doj.gov>
Subject: [EXTERNAL] Re: JEM Custodian of Record Form

Hi,

I've been away. Will send but need time to have client sign. Can you provide a template?

Regards,

Christopher M. DeCoste
Law Office of Christopher DeCoste, P.A.

Law Office of Christopher DeCoste, P.A.

40 NW 3rd St PH 1, Miami, FL 33128
305-395-5775

christopherdecoste.com

Sent from my iPhone

On Sep 20, 2023, at 7:44 PM, Andrews, Mathew (USANYS)
<Mathew.Andrews@usdoj.gov> wrote:

Hi Chris, following up on this. Can you please send us the signed custodian of record form for JEM as soon as possible? Otherwise, we will have to issue a trial subpoena next week to JEM Solutions for a custodian of record to testify at trial. Much appreciated.

From: Andrews, Mathew (USANYS)
Sent: Tuesday, August 29, 2023 3:01 PM
To: Christopher DeCoste <cmd@christopherdecoste.com>
Cc: Swett, Sebastian (USANYS) <SSwett@usa.doj.gov>;
Deiningner, Emily (USANYS) <EDeiningner@usa.doj.gov>
Subject: JEM Custodian of Record Form

Hi Chris, you'll recall that we served a grand jury subpoena on JEM Solutions in March 2021 (attached). When JEM responded, the production did not include a signed custodian of record form. Could you please provide us a signed form as soon as possible? It is at the end of the attached grand jury subpoena. Otherwise, we will have to issue a trial subpoena to JEM Solutions for a custodian of record to testify at trial. Much appreciated.

From: Christopher DeCoste <cmd@christopherdecoste.com>
Sent: Thursday, August 17, 2023 2:42 PM
To: Swett, Sebastian (USANYS) <SSwett@usa.doj.gov>
Cc: Andrews, Mathew (USANYS) <MAndrews@usa.doj.gov>
Subject: [EXTERNAL] Re: Pagan

Hi,

Chaotic week. How about tomorrow?

Regards,

Christopher M. DeCoste

Christopher M. DeCoste
Law Office of Christopher DeCoste, P.A.

40 NW 3rd St PH 1, Miami, FL 33128
305-395-5775

christopherdecoste.com

Sent from my iPhone

On Aug 14, 2023, at 10:32 AM, Swett, Sebastian
(USANYS) <Sebastian.Swett@usdoj.gov> wrote:

Hi Chris,

I hope this email finds you well. Would you have
time today for a short phone call about Mr. Pagan?

Best,
Sheb

Sheb Swett | Assistant United States Attorney
U.S. Attorney's Office for the Southern District of
New York
1 Saint Andrew's Plaza
New York, NY 10007
(o) (212) 637-6522
(c) (646) 832-8041